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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,078	01/17/2002	Toshiyuki Okumura	204552016410	6610
25227	7590	01/29/2003		
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102			EXAMINER JACKSON, CORNELIUS H	
			ART UNIT 2828	PAPER NUMBER

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	10/050,078	Applicant(s)	OKUMURA, TOSHIYUKI
Examiner	Cornelius H. Jackson	Art Unit	2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 January 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 16-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 16-25 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Paul J.
PAUL J.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. 09/380,537.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.

4) Interview Summary (PTO-413) Paper No(s). _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatakoshi et al. (6031858). Hatakoshi et al. teach a gallium nitride semiconductor light emitting device **Fig. 1** having a band corresponding to ultraviolet to green comprising a semiconductor substrate, an active layer **16** having a quantum well structure and made of nitride semiconductor containing at least indium and gallium, and a first cladding layer **13** and a second cladding layer **19** for sandwiching the active layer **16** there between, **see col. 11, lines 15-24**, wherein the one or each barrier layer has a layer thickness of 4 nm or less, **see col. 18, lines 1-4**. Hatakoshi et al. fails to teach the active layer consists of two to four quantum well layers and one to three barrier layers each interposed between the quantum well layers, instead Hatakoshi et al. teach the active layer consists of any numbers of quantum well layers and barrier layers, **see col. 4, lines 47-52 and col. 17, line 66-col. 18, line 9**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an active layer consisting of two to four quantum well layers and one to three barrier layers to obtain a

desire output wavelength/power, since it has been held that “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Regarding claims 17-19, Hatakoshi et al. teach all the stated limitations, **see rejection above and col. 35, line 66-col. 36, line 2.**

Regarding claim 21, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 22, Hatakoshi et al. teach all the stated limitations, **see rejection above and Fig. 1.**

Regarding claim 23, Hatakoshi et al. teach all the stated limitations, **see rejection above and Figs. 3A-B.**

Regarding claim 24, Hatakoshi et al. teach all the stated limitations, **see rejection above and col. 13, lines 1-9.**

Regarding claims 20 and 25, Hatakoshi et al. teach all the stated limitations, **see rejection above and col. 1, lines 10-49.**

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cornelius H. Jackson whose telephone number is (703) 306-5981. The examiner can normally be reached on 8:00 - 5:00, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Ip can be reached on (703) 308-3098. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7722 for regular communications and (703)308-7721 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

Paul Ip

PAUL IP
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

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January 27, 2003